

## HOUSE BILL NO. 735

INTRODUCED BY R. LENHART

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING MUNICIPALITIES TO ESTABLISH ACCOUNTS AND HOLD PROCEEDS FROM FIRE INSURANCE SETTLEMENTS UNTIL HEALTH AND SAFETY VIOLATIONS ARE ABATED; REQUIRING INSURERS TO WITHHOLD A PORTION OF FIRE INSURANCE SETTLEMENTS; AUTHORIZING MUNICIPALITIES TO BE REIMBURSED FROM WITHHELD FIRE INSURANCE PROCEEDS FOR COSTS INCURRED WHILE ABATING HEALTH AND SAFETY VIOLATIONS; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Participating municipalities.** (1) [Sections 1 through 11] apply to property located in a municipality only if the municipality, pursuant to a resolution by the governing body, notifies the state auditor in writing that the municipality has established a trust or escrow account to be used as prescribed in [sections 1 through 11] and intends to uniformly apply [sections 1 through 11] with respect to all property located within the municipality.

(2) The state auditor shall prepare and distribute a list of all municipalities that have elected to apply [sections 1 through 11] to all insurance companies transacting property insurance in Montana.

(3) A municipality remains on the list until a written request for deletion has been received by the state auditor.

(4) A municipality may not apply [sections 1 through 11] with respect to any loss that occurred before [the effective date of this act] or before being added to the list by the state auditor.

(5) For the purposes of [sections 1 through 11], "municipality" means an incorporated city or town or a consolidated government.

**NEW SECTION. Section 2. Partial withholding from settlement payments.** (1) When a claim is filed for a loss to insured real property because of fire or explosion and a final settlement is reached on the loss to the insured real property, an insurer shall withhold from payment 25% of the actual cash value of the insured real property at the time of the loss or 25% of the final settlement, whichever is less. At the time that 25% of the

1 settlement or judgment is withheld, the insurer shall give notice of the withholding to the treasurer of the  
2 municipality in which the insured real property is located, to the insured, and to any mortgagee having an existing  
3 lien or liens against the insured real property, if the mortgagee is named on the policy. In the case of a judgment,  
4 notice must also be provided to the court in which judgment was entered. The notice must include the following:

5 (a) the identity and address of the insurer;

6 (b) the name and address of each policyholder, including any mortgagee;

7 (c) the location of the insured real property;

8 (d) the date of loss, policy number, and claim number;

9 (e) the amount of money withheld;

10 (f) a statement that the municipality shall pay the withheld amount into a trust or escrow account  
11 established for the purposes of [sections 1 through 11] if it shows cause, pursuant to subsection (2), within 30  
12 days that the money should be withheld to protect the public health and safety, otherwise the withheld amount  
13 must be paid to the insured at the expiration of 30 days; and

14 (g) an explanation of the provisions of [sections 1 through 11] and a verbatim reproduction of [section  
15 10].

16 (2) In order for a municipality to escrow the amount withheld by the insurer and to retain that amount,  
17 the following procedure must be used:

18 (a) An affidavit, prepared by the chief fire official or another authorized representative of the municipality  
19 designated by the governing body of the municipality, that the damaged insured structure violates existing  
20 named health and safety standards requiring the escrow of the withheld amount as surety for the repair,  
21 replacement, or removal of the damaged structure constitutes cause for placing the withheld amount in escrow.

22 (b) In the case of a settlement, the affidavit must be sent to the insurer, the insured, and any  
23 mortgagees. Upon receipt of the affidavit, the insurer shall forward the withheld amount to the treasurer of the  
24 municipality and shall provide notice of the forwarding to the insured and any mortgagees.

25 (c) In the case of a judgment, the affidavit must be sent to the insurer, the insured, any mortgagees, and  
26 the court in which the judgment was entered. Upon receipt of the affidavit, the insurer shall forward the withheld  
27 amount to the treasurer of the municipality and shall provide notice of the forwarding to the insured, any  
28 mortgagees, and the court in which judgment was entered.

29 (3) Upon receipt of money and information from an insurer pursuant to subsection (2) and this  
30 subsection, the treasurer of the municipality shall record the information and the date of receipt of the money

1 and shall immediately deposit the money in a trust or escrow account established for purposes of [sections 1  
2 through 11]. The account may be interest-bearing. If the mortgage on the insured property is in default, the  
3 treasurer, upon written request from a first mortgagee of property with respect to which policy proceeds were  
4 withheld and placed into a trust or escrow account, shall release to the mortgagee all or any part of the policy  
5 proceeds received by the municipality with respect to that property, not later than 10 days after receipt of the  
6 written request by the mortgagee, to the extent necessary to satisfy any outstanding lien of the mortgagee.

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8 **NEW SECTION. Section 3. Commingling of funds -- retention of interest.** Except as provided in  
9 [section 6], money deposited in an account pursuant to [section 2] may not be commingled with municipal funds.  
10 Any interest earned on money placed in a trust or escrow account must be retained by the municipality to defray  
11 expenses incurred under [sections 1 through 11].

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13 **NEW SECTION. Section 4. Release of deposited proceeds to insured.** (1) Except as provided in  
14 subsection (4), the policy proceeds deposited under [section 2] must immediately be forwarded to the insured  
15 when the chief fire official or another authorized representative of the municipality designated by the governing  
16 body of the municipality receives or is shown reasonable proof of any of the following:

17 (2) that the damaged or destroyed portions of the insured structure have been repaired or replaced,  
18 except to the extent that the amount withheld under this section is needed to complete repair or replacement;

19 (3) that the damaged or destroyed structure and any remnants of the structure have been removed from  
20 the land on which the structure or the remnants of the structure were situated, by the owner or by any other  
21 person, in compliance with the local code requirements of the municipality in which the structure was located;  
22 or

23 (4) that the insured has entered into a contract to perform repair, replacement, or removal services with  
24 respect to the insured real property and that the insured consents to payment of funds directly to the contractor  
25 performing the services. Funds released under this section may be forwarded only to a contractor performing  
26 services on the insured property.

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28 **NEW SECTION. Section 5. Reasonable proof.** Reasonable proof required under [section 4] may  
29 include any of the following:

30 (1) originals or copies of pertinent contracts, invoices, receipts, and other similar papers evidencing both

1 the work performed or to be performed and the materials used or to be used by all contractors performing repair,  
2 replacement, or removal services with respect to the insured real property, other than a contractor subject to  
3 subsection (2);

4 (2) an affidavit executed by the contractor that has performed the greatest amount of repair or  
5 replacement work on the structure or that has done most of the clearing and removal work if structure repair or  
6 replacement is not to be performed. The contractor shall attach to the affidavit all pertinent contracts, invoices,  
7 and receipts and shall swear that these attached papers correctly indicate the nature and extent of the work  
8 performed to date by the contractor and the materials used.

9 (3) an inspection of the insured real property to verify that repair, replacement, or clearing has been  
10 completed in accordance with [section 4].  
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12 **NEW SECTION. Section 6. Use of retained proceeds.** If reasonable proof is not received by or shown  
13 to a fire official or another authorized representative of the municipality designated by the governing body of the  
14 municipality within 45 days after the policy proceeds portion was received by the treasurer of the municipality,  
15 the municipality shall use the retained proceeds to secure, repair, or demolish the damaged or destroyed  
16 structure and clear the property in question, so that the structure and property are in compliance with local code  
17 requirements and applicable ordinances of the municipality. If, before a period of 45 days after the portion of the  
18 proceeds was received by the treasurer, the municipality has secured, repaired, or demolished the damaged  
19 or destroyed structure pursuant to an applicable law or ordinance, the municipality may after 45 days from the  
20 date of receipt release the special assessment placed on the property, if any, and reimburse itself from the  
21 retained funds. No more than 15% of the policy proceeds used by the municipality under this section may be  
22 attributed to the municipality's administrative expenses, which must be directly related to the actions authorized  
23 under this section. Any unused portion of the retained proceeds must be returned to the insured.  
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25 **NEW SECTION. Section 7. Proceeds not included.** A final settlement may not include the payment  
26 of policy proceeds for personal property or contents damage or for additional coverage not contained in the fire  
27 coverage portion of the fire insurance policy.  
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29 **NEW SECTION. Section 8. Immunity from liability.** There may not be liability on the part of, and a  
30 cause of action may not arise against, an insurer or an agent or employee of an insurer for withholding or

transferring money in the course of complying or attempting to comply with [sections 1 through 11].

**NEW SECTION. Section 9. Limited applicability -- amount of settlement.** [Sections 1 through 11] apply only to final settlements that exceed 49% of the insurance on the insured real property.

**NEW SECTION. Section 10. Exceptions to withholding requirements.** The withholding requirements of [sections 1 through 11] do not apply if all of the following occur:

(1) within 30 days after agreement on a final settlement between the insured and the insurer, the insured has filed with the insurer evidence of a contract to repair as described in [section 5];

(2) the insured consents to the payment of funds directly to the contractor performing the repair services. Funds released under this subsection may be forwarded only to a contractor performing the repair services on the insured property.

(3) on receipt of the contract to repair, the insurer gives notice to the municipality in which the property is situated that there will not be a withholding under this section because of the repair contract.

**NEW SECTION. Section 11. Demolition costs or debris removal costs as part of final settlement -- withholding.** If the insured and the insurer have agreed on the demolition costs or the debris removal costs as part of the final settlement of the real property insured claim, the insurer shall withhold one of the following sums, whichever sum is the largest, and shall pay that sum in accordance with this section:

(1) the agreed cost of demolition or debris removal;

(2) 25% of the actual cash value of the insured real property at the time of loss; or

(3) 25% of the final settlement of the insured real property claim.

**NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 11] are intended to be codified as an integral part of Title 33, chapter 24, and the provisions of Title 33, chapter 24, apply to [sections 1 through 11].

**NEW SECTION. Section 13. Applicability.** [This act] applies to contracts for fire insurance entered into or renewed on or after [the effective date of this act].

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